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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,444	04/09/2007	Reto Strachler	129203	8468

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OLIFF & BERRIDGE, PLC  
P.O. BOX 320850  
ALEXANDRIA, VA 22320-4850

EXAMINER
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KARLS, SHAY LYNN

ART UNIT	PAPER NUMBER
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3723

NOTIFICATION DATE	DELIVERY MODE
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03/09/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

OfficeAction25944@oliff.com  
jarmstrong@oliff.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/590,444	<b>Applicant(s)</b> STRAEHLER, RETO	
	<b>Examiner</b> Shay L. Karls	<b>Art Unit</b> 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 12-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Election/Restrictions**

Newly submitted claims 12-15 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 12 is directed to a method of securing the brush head. The original claims were directed to an apparatus and not a method. Claim 14 and 15 are both directed to a toothbrush however the original claims were directed to tufting machine device.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 12-15 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### **Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-3, 5-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Waguespack (USPN 5863102).**

Waguespack teaches a device for securing the head of a toothbrush in a processing machine. There is a retaining part (44, 46) with a retaining flange (figure 5 shows the flange at the top of the retaining part). There is a supporting surface (figure 6, bottom of retaining part) integrally formed on the flange (all one piece).

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With regards to claim 2, the retaining part has a clamping surface (side edge as shown in figure 5) that interacts with a peripheral edge of a toothbrush head.

With regards to claim 3, the clamping surface, when viewed in cross section, is concave (figure 5 and 6).

With regards to claim 5, the retaining flange, on its side which is directed away from the supporting surface has a further supporting surface (surface located under flange that overlaps the top surface of a toothbrush head; figure 6).

With regards to claim 6, the supporting surface, the clamping surface and the further supporting surface are formed to mate with a bristle carrier (figure 6 shows the device in use).

With regards to claim 7, the retaining part comprises two retaining parts (44, 46) which can be moved relative to one another between a retaining position and a receiving position.

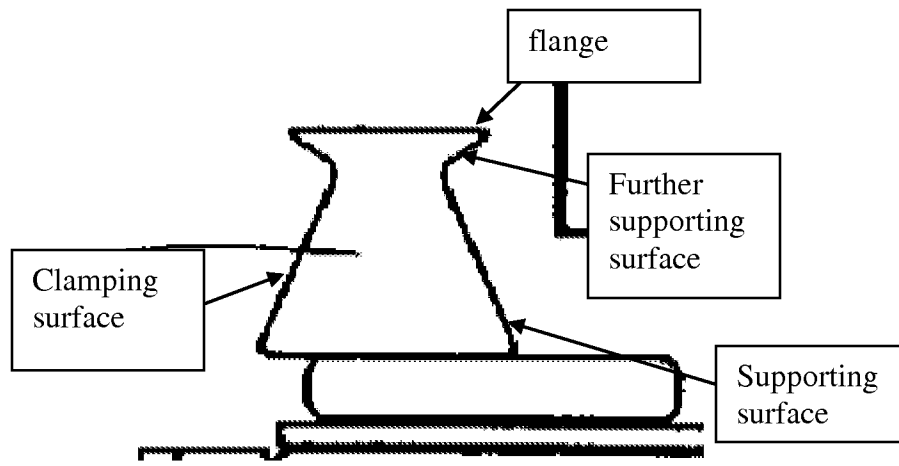
With regards to claim 8, the retaining flanges of the two retaining parts are mirror-symmetrical design (figure 4).

With regards to claim 9, the retaining flanges of the two retaining parts are spaced from one another in the retaining position (figure 4).

With regards to claim 10, the clamping surface follows the supporting surface and runs transversely to supporting surface.

With regards to claim 11, the retaining part further comprises a clamping surface which interacts with a peripheral lateral surface of a bristle carrier, a retaining flange having, on a side which is directed away from the supporting surface, a further supporting surface (figure 6). The supporting surface, clamping surface and the further supporting surface are formed to mate with the bristle carrier.

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### Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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**Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waguespack (UPSN 5863102).**

Waguespack teach all the essential elements of the claimed invention however fails to teach the wall thickness of the flange. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the free end of the flange so that it has a wall thickness of at least 1mm since the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device. A device having the claimed relative dimensions would not perform differently than the prior art device and therefore, the claimed invention is not patentable over the prior art.

#### **Response to Arguments**

Applicant's arguments filed 12/27/10 have been fully considered but they are not persuasive.

The applicant argues that Waguespack fails to teach that the retaining part engages a toothbrush head in a space between component portions of the toothbrush head. In response, the claims are directed to a device, not a toothbrush. The claim preamble clearly states "the device comprising" and therefore any limitations in the claims directed to a toothbrush are irrelevant since the toothbrush itself is not positively claimed. The claim, as is, only includes limitations directed to elements pertaining to the device.

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L. Karls whose telephone number is 571-272-1268. The examiner can normally be reached on 6:30-5:00 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shay L Karls/  
Primary Examiner, Art Unit 3723